



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2018-0188; FRL-9982-06-Region 7]**

**Approval of Nebraska Air Quality Implementation Plan;  
Particulate Emissions; Limitations and Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) submitted on July 14, 2014, by the State of Nebraska. This final action will amend the SIP to include revisions to title 129 of the Nebraska Administrative Code, chapter 20 "Particulate Emissions; Limitations and Standards". The revisions make clear that the emission rates in the rule apply to applicable sources except when a more stringent Federal rule or limit in a construction permit exists. Other minor administrative revisions are also being made. Approval of these revisions will not impact air quality, ensures consistency between the State and Federally approved rules, and ensures Federal enforceability of the State's rules.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2018-0188. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at [crable.gregory@epa.gov](mailto:crable.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. EPA's Response to Comments.
- IV. What Action is EPA Taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

**I. What is Being Addressed in this Document?**

EPA is approving amendments to Nebraska's SIP to include revisions to title 129 of the Nebraska Administrative Code, chapter 20, "Particulate Emissions; Limitations and Standards" submitted to EPA on July 14, 2014. EPA proposed approval of the State's submission in its action published in the **Federal Register** on June 5, 2018 at 83 FR 25975. The chapter 20 revisions provide clarity to the chapter. The revisions to chapter 20, being addressed in this action, were submitted as a part of a larger package, revising other title 129 chapters, submitted at the same time as the July 14, 2014 submittal. On April 6, 2018, EPA took final action on two title 129 chapters, chapter 1 "Definitions", and chapter 15 "Operating Permit Modifications; Reopening for Cause." In that final action, EPA stated it would take action separately on chapter 20. See 83 FR 14762. EPA is now taking a final action to approve revisions to chapter 20. The revisions to chapter 20 are described below.

Nebraska's Department of Environmental Quality (NDEQ) approved the revision to the chapter title by removing, "(EXCEPTIONS DUE TO BREAKDOWNS OR SCHEDULED MAINTENANCE: SEE CHAPTER 35)" and replacing it with a stand alone statement of exception that reads: "For exceptions due to breakdowns or scheduled maintenance: see Chapter 35 - COMPLIANCE; EXCEPTIONS DUE TO STARTUP, SHUTDOWN, OR

MALFUNCTION.” In addition, the submitted revision removes a footnote to table 20-2, making it a stand alone section numbered 007 and finally, the revision will add 008 clarifying that section 001 and 002 of chapter 20 applies unless a more stringent particulate matter standard is specified in the underlying requirements of an applicable Federal rule or is specified within a construction permit issued under title 129.

## **II. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## **III. EPA's Response to Comments**

The public comment period on EPA's proposed rule opened on June 5, 2018, the date of its publication in the **Federal Register**, and closed on July 5, 2018. During this period, EPA received four comments. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed rule and fails to identify any material issue necessitating a response. Accordingly, the EPA will not provide a specific response to the comments. We note that the public

comments received on this rulemaking action are available for review by the public and may be viewed by following the instructions for access to docket materials as outlined in the **ADDRESSES** section of this preamble.

#### **IV. What Action is EPA Taking?**

EPA is taking final action to amend the Nebraska SIP, to include revisions to title 129, chapter 20 as submitted by NDEQ on July 14, 2014.

#### **V. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval,

and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is



published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: \_\_\_\_\_

August 16, 2018.

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James B. Gulliford,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart CC -- Nebraska**

2. Amend §52.1420(c) by revising the entry for citation "129-20" to read as follows:

**§ 52.1420 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Nebraska Regulations**

Nebraska citation	Title	State effective date	EPA Approval date	Explanation
<b>STATE OF NEBRASKA</b>				
<b>Department of Environmental Quality</b>				
<b>Title 129-Nebraska Air Quality Regulations</b>				
* * * * *				
129-20	Particulate Emissions; Limitations and Standards	5/13/2014	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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[FR Doc. 2018-18103 Filed: 8/22/2018 8:45 am; Publication Date: 8/23/2018]